

## **REMARKS**

Reconsideration of the present application in view of the above amendments and the following remarks is respectfully requested.

### **I. Status of the Claims**

Claims 104-170 are pending in this application. Claims 128-136 have been previously canceled and claims 104, 124, 153 and 157 are currently amended. New claims 171-174 have been added.

### **II. Interview with Examiner**

The Examiners granted Applicants telephone interviews on May 19 and 24, 2005. Applicants thank the Examiners for extending these courtesies. The Remarks herein comprise Applicants written summary and response to the interview

### **III. Claim Objections**

The Examiner has objected to claims 104, 124, 153 and 157 as not conforming to current amendment marking practice. The claims have been marked as requested to conform to their current status.

#### **IV. Rejections Under 35 U.S.C. § 103**

The Examiner has rejected claims 104-112, 114, 117, 119, 124-127, 137, 139, 142 and 144 under 35 U.S.C. § 103(a) as being unpatentable over Brown, United States Patent No. 5,951,300, (“Brown300”) in view of Alyfuku, et al., United States Patent No. 5,410,471, (“Alyfuku”).

The Examiner has rejected claims 113, 118, 138, 143, 149, 152-153, 157, 167-170 under 35 U.S.C. § 103(a) as being unpatentable over Brown300, in view of Alyfuku and further in view of Korenman, et al., United States Patent No. 6,067,468 (“Korenman”).

The Examiner has rejected claims 115-116, 120-121, 140-141, 145-146, 154-156 and 158-166 under 35 U.S.C. § 103(a) as being unpatentable over Brown300, in view of Alyfuku, et al. and Korenman and further in view of Pottgen, et al., United States Patent No. 5,813,994 (“Pottgen”) and Nasiff, United States Patent No. 4,757,453 (“Nasiff”).

The Examiner has rejected claim 122 under 35 U.S.C. § 103(a) as being unpatentable over Brown300, in view of Alyfuku, et al. and Brown et al., United States Patent No. 6,032,119 (“Brown 119”).

The Examiner has rejected claim 123 under 35 U.S.C. § 103(a) as being unpatentable over Brown300, in view of Alyfuku, et al., Brown 119 and Brown et al., United States Patent No. 5,913,310 (“Brown 310”).

The Examiner has rejected claims 147, 148, 150 and 151 under 35 U.S.C. § 103(a) as being unpatentable over Brown300 and Alyfuku and further in view of Pottgen.

Each of the rejections are based primarily upon Brown300 and with the exception of claims 122-123, for the reasons substantially set out in previous actions. During the course of the Interview, the Examiners indicated that they had been persuaded by Applicants with respect

to the teachings of the Brown300 reference and would withdraw the rejections based upon that reference. The Examiners further indicated that additional searching was necessary and provided, as an illustrative example, United States Patent No. 6,808,473 to Hisano et al. (“Hisano et al.”); United States Patent No. 5,730,140 to Fitch (“Fitch”) and United States Patent No. 5,941,837 to Amano et al. (“Amano”). Applicants thank the Examiner for the extra time the Examiner spent performing this additional prior art search and for giving the Applicants the opportunity to review these references prior to submitting this response.

Applicants have submitted, under separate cover, a supplemental Information Disclosure Statement including Fitch and Amano. Hisano et al. has been determined to be inapplicable as not prior art since it has a filing date (and consequently an issue date) well after the filing date of the present application. The Fitch reference teaches little in relation to the claimed invention. Fitch discloses an invention that uses sound to monitor physiological data. See Col. 1, lns. 11 and 12. Specifically, Fitch is a method and apparatus for converting physiological information into sound by synthesizing complex realistic body sounds to reveal physiological variables such as heart rate or breathing rate. See Abstract. This is to provide a sonic data interface for users whose eyes are occupied with other tasks. See Col.1, lns. 21 and 22. Fitch does not provide a method for assisting an individual to monitor, control and modify certain aspects of the individual's physiological status according to a preset physiological status goal as is claimed in the current invention. Notably, Fitch makes no mention of physiological status goals, neither the setting of such goals or the determining quantitative status information indicative of the relative degree of achievement of said individual's performance with relation to said physiological status goal as is currently claimed in the present invention.

Amano discloses a health management device which is intended to obtain information relating to circulation in the body as one factor (col. 1, lines 5-27; col. 5, lines 60-65).

Acceleration pulse waveforms are utilized as the physiological parameter that is detected (col. 1, lines 47-50; col. 5, lines 60-65). These waveforms are evaluated in the form of an indicator showing the state of the user's circulation (col. 6, lines 10-17). Another aspect of the evaluation is the detection of exercise periods (col. 7, lines 20-30) during which acceleration pulse waveforms are not detectable (col. 5, lines 10-25). Finally, the device indicates whether or not the exercise has induced a change in the indicator (col. 7, lines 45-50).

As currently amended, the claims of the present invention each require the calculation of quantitative status information indicative of the relative degree of achievement of a specified goal. The quantitative status information must be calculated from two parameters obtained by the system. The Amano reference discloses a device and method in which the information or feedback given to the user is an indication of their circulation status, based upon the indicator. The indicator is obtained from a single parameter of the human physiology, being the detection of acceleration pulse waveforms by a fingertip plethysmogram. An accelerometer or other body movement detection means is merely utilized to detect periods of exercise during which the acceleration pulse waveforms may not be accurately measured. In contrast to the claimed invention, Amano makes no calculation or other evaluation of the pulse waveforms or of the indicators in which the calculation utilizes body movement or any other parameters. Thus, in contrast to the claimed invention, Amano does not use two parameters to calculate quantitative status information indicative of the relative degree of achievement of a specified goal.

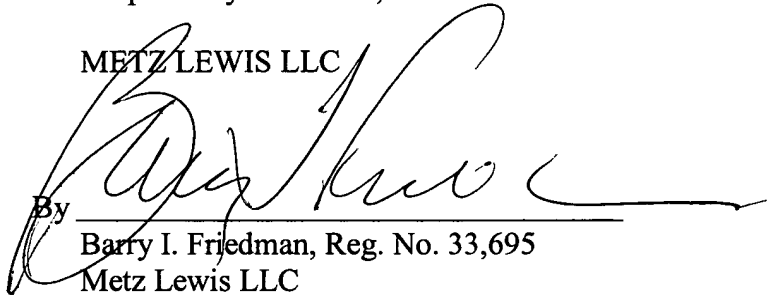
New dependent claims 171-174 have been added to more clearly identify the derivative nature of the calculated quantitative status information as well as the nature of the communications to the recipient relating to their relative degree of achievement of their goal.

### CONCLUSION

In light of the foregoing, claims 104-174 are in condition for allowance. Reconsideration is requested at an early date.

Respectfully submitted,

METZ LEWIS LLC

A large, stylized handwritten signature in black ink, appearing to read 'Barry I. Friedman', is written over a horizontal line.

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